

Michael Vs. Ameena Bibi and ors.

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Court : Kolkata

Decided On : May-07-1883

Reported in : (1883)ILR9Cal733

Judge : Norris, J.

Appellant : Michael

Respondent : Ameena Bibi and ors.

Judgement :

Norris, J.

1. This is a mortgage suit. The plaint states that on 8th January 1881 the defendant No. 1 mortgaged certain premises to the plaintiff to secure the repayment of Rs. 12,000 with interest.

2. By an indenture of 21st January 1882 the defendant No. 1 conveyed the mortgaged premises, subject to the mortgage, to defendants Nos. 2 and 3 upon trust for certain charitable purposes.

3. The prayer of the plaint is 'that an account may be taken of what is due to the plaintiff for principal and interest on the security of the said indenture of mortgage of 8th January 1881, and that in default of payment of the amount to be found due, and of the plaintiff's costs of this suit by a short day to be appointed by the Court in

that behalf, the defendants may be absolutely foreclosed of all equity of redemption of and in the said mortgaged premises or otherwise that the same may be sold under the direction of this Honorable Court.'

4. A question arises as to the sufficiency of the service of the summons on defendant No. 2.

5. It appears from the affidavits that prior to the institution of the suit the plaintiff was informed that defendant No. 2 was residing at Bombay; that after the institution of the suit, on making further inquiries, he was informed that the defendant had left Bombay; that he was unable to find him or to ascertain his correct address, or to find any agent empowered to accept service of the summons; that on 5th January 1883 a copy writ of summons was personally served upon one Hadjee Mahomed Osman, the lawfully constituted agent of defendant No. 2, who at the time of such service was in charge of the mortgaged premises, and was collecting the rents thereof.

6. Mr. Trevelyan asked me to hold that this was good service under Section 77 of the Civil Procedure Code, arguing that this was 'a suit to obtain relief respecting immovable property.'

7. As I was informed that this was the first case in which service had purported to be effected under this section, I took time to consider the matter. As far as I know there is no definition in the Code or elsewhere of 'a suit to obtain relief respecting immovable property'; but a reference to Section 16 of the Code seems to show that this suit is such an one. Section 16 says: 'Subject to the pecuniary or other limitations prescribed by any other law, suits:

(a) for the recovery of immovable property;

(b) for the partition of immovable property;

(c) for the foreclosure or redemption of a mortgage of immovable property;

(d) for the determination of any other right to or interest in immovable property;

(e) for compensation for wrong to immovable property;

(f) for the recovery of movable property actually under distraint or attachment;

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

8. Then follows a proviso where instead of referring to the suits which in the section are lettered a, b, c, and d, by such lettering or as the first four suits above-mentioned or recapitulating them again in full, they appeared to be described collectively 'as suits to obtain relief respecting immovable property.'

9. I am, therefore, of opinion that the service is good, and that the case may proceed.

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